IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 197 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT ON BEHLAF OF B J PATEL

Versus

MURTUZA ALI MEHBOOBALI MERCHANT

Appearance:

MR. BY MANKAD, APP for Petitioner No. 1

MR DK MODI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 05/10/2001

ORAL JUDGEMENT

1. This Revision Application is filed by the State of Gujarat on behalf of Mr.B.J.Patel, the Food Inspector, Bhavnagar, being aggrieved and dissatisfied by the order of learned Chief Judicial Magistrate, Bhavnagar, passed

on 20th January, 2000 discharging the present respondent - accused in Criminal Case No. 1006 of 1999 of the charges levelled against him under Section 2(1-a)(a)(m) read with Section 7(1) of the Prevention of Food Adulteration Act, 1954.

2. As per brief facts of the case, the original complainant Mr. B.J.Patel, Food Inspector is a Food Inspector of the State of Gujarat. On the date of incident, the said Food Inspector was working as such in the District of Bhavnagar. The respondent herein accused is running a shop and selling edible oil at the Station Road, Bhavnagar. On 12th October, 1998, Food Inspector obtained a sample of refined Rape seed Oil from the shop of the accused. After necessary formalities as per the Rules, the sample was sent to Public Analyst, Baroda, In the opinion of Public Analyst, the sample was not in conformity with the standards as laid down in the Act, particularly in the standards of (1) Iodine Value, (2) Saponification Value, and (3) Bellier Test. After obtaining necessary sanction, the complaint came to be filed against the accused by the Food Inspector on 11th February, 1999. Accused was called upon and vide Exh. 3, he applied to the Chief Judicial Magistrate, First Class, Bhavnagar, for sending the other sample to the Central Food Laboratory, Calcutta. Learned Chief Judicial Magistrate, Bhavnagar, forwarded the sample, according to law, to the Central Food Laboratory, Calcutta. After analysis, the Analyst of Central Food Laboratory, Calcutta, found that in all other respects, the sample was in conformity with the standards laid down by the Act, but the same did not conform with the Aflatoxin B-1 Test and, therefore, in the opinion of the Director, Central Food Laboratory, Calcutta, the sample was adulterated. Thereafter, the accused vide Exh.15 applied before the Learned Chief Judicial Magistrate that the accused was entitled to discharge on the ground that the Public Analyst found the sample not in conformity with the above three tests. While the Analyst of Central Food Laboratory found the sample in conformity with in respect of the above mentioned three tests, namely, (i) Iodine Value, (ii) Saponification value, and (iii) Bellier Test. It was stated in the Application, that basing above 3 defects, the complaint came to be filed. It was stated that the norms by which the rape seed oil was required to be analysed are given by the Rule 5 Appendix-B item A.17.06 and those norms do not prescribe any test like Aflatoxin B-1 Test. Even then, the Analyst of Central Food Laboratory carried out Aflatoxin-B-1 Test which is not prescribed as said above by the Act and Rules. It was further urged in the Application that the

sample was taken on 12th of October, 1998 and the sample which was sent by the Chief Judicial Magistrate to the Central Food Laboratory was received by Central Food Laboratory on 15th October, 1999. The Report in Form No.II of the analysis done by the Central Food Laboratory does not denote any date on which the sample was analysed and therefore it was urged that the sample was decomposed for analysis and the opinion of the Analyst of the Central Food Laboratory cannot be taken into consideration even in respect of Aflatoxin B-1 Test.

3. Learned Chief Judicial Magistrate, First Class, Bhavnagar, heard both the parties and after agreeing with the learned advocate of the accused, passed the order for discharge of the accused. The learned Chief Judicial Magistrate appears to have placed reliance on a fact that Form No.II i.e. the opinion of the Analyst, Central Food Laboratory, does not bear the date on which the analysis was done. The learned Chief Judicial Magistrate appears to have relied on a fact that on discrepancy between the two analyst reports, it was necessary for the prosecution to obtain fresh sanction because the Aflatoxin B-1 test was not prescribed in the norms given in Rule-5 Appendix-B, item A.17.06 for Rape seed oils and that the adulteration which is mentioned in the report of Analyst of the Central Food Laboratory as a result of Aflatoxin B-1 Test, may be due to some other reasons like environmental change and because the sample was analysed after almost one year. Learned Magistrate also came to the conclusion that due to this, the sample of food had become decomposed and, therefore, there were no reason to proceed against the accused. Hence, under the provisions of Sec. 245(2) of the Cri. Procedure Code, present respondent original accused came to be discharged and hence this Revision Application by the State through the Food Inspector.

4. Learned APP Mr. B.Y. Mankad for the petitioner - State of Gujarat while learned Advocate Mr. D.K. Modi for the respondent - accused were heard.

5. Learned APP Mr.B.Y. Mankad has vehemently urged that the Aflatoxin B-1 Test has not been prescribed by Rule 5 for the rape seed oil which is item A.17.06 of Appendix-B but the same is prescribed by Rule 57-A of the Prevention of Food Adulteration Rules, 1955. Learned APP Mr.Mankad contended that this test must be applied to all articles of food and, therefore, Analyst of Central Food Laboratory applied this test to the sample of food i.e. rape seed oil and found that while Aflatoxin B-1 Test was required 0.03 mg/kg, the same was found by the Public

Analyst to the extent of 42.0. It was urged that the Aflatoxin B-1 test is also provided for by the Rules and it cannot be said that since the same is not provided for by Rule 5 Appendix-B item A.17.06, the same cannot be undertaken. It was urged that it was for the accused to prima facie show that the sample was decomposed when analysed by the Central Food Laboratory. On the contrary, in the opinion of the Central Food Laboratory, the sample was fit for the analysis. It was contended that thereupon the learned Chief Judicial Magistrate had erred in coming to the conclusion that the sample was decomposed and not fit for analysis. It was urged that the opinion of the Analyst of Central Food Laboratory will supersede the opinion of the Public Analyst and, therefore, according to Mr. Mankad the opinion of Public Analyst as per Section 13(3) of the Prevention of Food Adulteration Act, 1954 cannot be taken into consideration and be compared as has been done by the learned Chief Judicial Magistrate. It is therefore urged that the order being erroneous, requires to be revised and set aside.

6. Learned Advocate Mr. Modi for the respondent accused has contended that the Aflatoxin B-1 Test is not prescribed by the Rule 5 Appendix-B item A.17.06 for analysing the sample of rape seed oil. The attention of this Court was drawn to Rule 5 Appendix-B item A.17.06, it was urged that the following 8 tests are prescribed by item A.17.06 by the Legislature for the rape seed oil.

(a)	Butyro-refractometer reading at 40 degree C.	: 58.0 to 60.5
(b)	Saponification value	: 168 to 177
(c)	Iodine value	: 96 to 112 Polybromide test shall be negative
(d)	Unsaponifiable matter	: Not more than 1.2 per cent by weight
(e)	Acid value	: Not more than 6.0
(f)	Bellier Test (Turbidity temperature - Acetic acid method)	: 23.0 degree C to 27.5 degree C.
(g)	Test for argemone oil	: Negative

(h) Test for Hydrocyanic acid : Negative

7. It was urged that Aflatoxin B-1 Test was not necessary at all for the sample of rape seed oil. Had it been so, the Legislature would have provided the Test in item A.17.06 of Appendix B. Not providing the said test, in above standards, leads to believe that the test is not prescribed nor necessary. It was further urged that wherever the Aflatoxin B-1 Test is necessary, the Legislature in its wisdom has prescribed the test in the norms. The attention of this Court was drawn to the sample of wheat and other crops wherein the test of Aflatoxin B-1 has been prescribed by the Legislature. It was, therefore, urged that while the above test prescribed by item No.A.17.06 of Appendix-B, the sample was in conformity with the standards laid down in the opinion of Analyst of Central Food Laboratory, there was no case against the accused and he was rightly discharged. It was further urged that Aflatoxin B-1 Test carried out by the Analyst of Central Food Laboratory would be required to be ignored because the same is neither prescribed nor necessary as said above. It was urged that the case of prosecution is not in the contravention of Rule 37(A) which prescribes Aflatoxin B-1 Test and the accused cannot be placed to face altogether a new case than mentioned in the complaint filed and, therefore, it was urged that the learned Chief Judicial Magistrate has rightly discharged the accused in the case.

8. Having considered the rival contentions and perusing the records, the admitted fact is, the sample was taken on 27th October, 1998. On three counts mentioned above, the sample did not conform with the standard as prescribed by the Act and Rules, the complaint came to be filed on 11th February, 1999. On 16th April, 1999, upon an application by the accused, as per the provision of Section 13, the other sample was sent by the Chief Judicial Magistrate to the Central Food Laboratory, Calcutta. In the opinion of Analyst of Central Food Laboratory, the sample was in conformity in all other respects with the prescribed norms except Aflatoxin B-1 Test. Therefore, in these circumstances, the question has arisen that whether there is prima facie case under the Prevention of Food Adulteration Act, 1954 to proceed against the respondent.

9. On perusing the complaint, it appears that the accused is charged for the offences punishable under Section 2(1-a)(a)& (m) read with Section 7(1) and Section 16 of the Prevention of Food Adulteration Act, 1954. The

case against the accused is he stored and sold the adulterated food. In this case, it was rape seed oil. Now, if we peruse the definition of adulterated food as has been given in Section 2, the accused is charged as per Section 2(1-a)(a) also. As per sub-clause (a) of Sec. 2(1) "adulterated" includes if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be. Sec. 2(i)(b) further establishes that an article of food shall be continued to be adulterated if the articles contain any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof. While Section 2(m) "establishes that if the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health :

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause."

10. Now Section 7 provides no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any adulterated food. Bearing in mind that adulterated food which is envisaged by Section 7(1) is necessarily as prescribed by Section 2(1-a), (a), (b) and (m). Contravention of Sec. 7(1) is to sell such adulterated food as per Section 2 and such contravention is made punishable by Section 17. It is nowhere mentioned in Sec.7 that contravention of selling or storing adulterated food will be there only if it does not conform with standards laid down as per Appendix-B of Rule-5. It appears that the main controversy is regarding carrying out Aflatoxin B-1 Test by the Analyst of the Central Food Laboratory and the norms for analysis of rape seed oil is prescribed in item A.17.06 of Appendix-B. In all, this provision prescribed 8 tests. While Rule 57-A prescribes Aflatoxin B-1 Test. Now the contention is, since the test Aflatoxin B-1 as prescribed by Rule 57-A is not prescribed in item A.17.06 of Appendix-B, the same is required to be ignored and the contention is upheld by the Chief Judicial Magistrate,

Bhavnagar. Going through the various provisions of the Act and Rules and the object of the Prevention of Food Adulteration Act, 1954, it is clear that the miscarriage of justice has been caused to the complainant prosecution by the order of the learned Chief Judicial Magistrate, Bhavnagar is discharging the accused on the above grounds. As said above, the offence under the Prevention of Food Adulteration Act in respect of the present case is for the prevention of selling adulterated food as per Section 7(1). As discussed above, having regard to the definition of adulterated food, as provided for under Section 2(1-a), (a), (b) and (m), the same includes all kinds of adulteration. The reading together Section 7(1) and Section 2 of the Prevention of Food Adulteration Act, 1954, it is clear that the offence is completed when the adulterated food is stored or sold by the accused. A food sample may be adulterated as per prescribed norms provided for in item No. A.17.06 of Appendix B or any other tests laid down by the Rules. Therefore, once, prima facie, it is established that the sample food taken by the Food Inspector is adulterated as per Section 2 of the Act and is in the contravention of Section 7(1) of the Prevention of Food Adulteration Act, 1954, then, these are sufficient grounds to proceed against the accused. In this respect, Rule-4 of the Prevention of Food Adulteration Rules, 1955 is required to be taken into consideration. Rule 4 pertains to analysis of food samples by the Analyst of the Central Food Laboratory. Sub-rule (5) of Rule 4 provides that after test or analysis, the certificate thereof shall be supplied forthwith to the sender in Form II. Neither Form-II nor Rule 4 provides any test specifically or other wise to be carried out by the Analyst of the Central Food Laboratory nor it restricts the analyst to perform only those tests which are provided for by Schedule-B of Rule-5. Meaning thereby that the Analyst is not bound to perform only those tests which are prescribed by item No. A.17.06 of Appendix B in respect of sample rape seed oil. But Analyst may carry out other tests also as prescribed by the Rules of the Prevention of Adulteration Rules, 1955. The view that the Public Analyst will have to act according to prescribed tests only as envisaged by Rule 5 and Appendix-B, then the same would be frustrating the very object. Obviously, what is made offence under the Act is selling and storing of adulterated food. Adulterated food is defined by Section 2. The Section 2 is not classifying that adulterated food is to be decided only by the prescribed standard as laid down by Rule 5 and Appendix-B. On the contrary, the Prevention of Food Adulteration Rules, 1955 prescribes other tests in addition to tests provided for by Rule-5 Appendix-B for

the food article, which denotes that if the article of food is found, analyst may carry out other tests provided by the Rules though not provided by the prescribed norms as per Rule 5 and Appendix-B. If such food sample is found adulterated, then the selling and storage of such food is certainly offence as per Section 7(1) of the Prevention of Food Adulteration Act. In these circumstances, the reasoning of learned Chief Judicial Magistrate discharging the accused by no stretch of reasoning can be countenanced.

11. In the opinion of the Analyst of Central Food Laboratory, it is crystal clear that the sample was fit for analysis and was not decomposed. Decomposing of the sample appears to be the imagination of learned Chief Judicial Magistrate because on that ground also the application for discharge came to be allowed. It is now for the accused to prove other wise as per the law that the sample was decomposed. During trial, the law affords some sanctity to the opinion of experts like Public Analyst and Analyst of the Central Food Laboratory because without even examining them, the report can be admitted to the evidence. Therefore, at this stage, the question of decomposing of the sample when same was analysed by the Analyst of Central Food Laboratory is not relevant.

12. As said above, the case against the accused is for the selling of adulterated food as defined by the Act. True it is that in the complaint some contents of the Public Analyst's report of Baroda has been mentioned, but the same would not alter the nature of the complaint and the offence committed. Only because the Central Food Laboratory has undertaken a different test, it cannot be said that the Analyst of Central Food Laboratory undertaken Aflatoxin B-1 Test which was not undertaken by the Public Analyst, Baroda and, therefore, a new case is put against the accused. This is so because the case against the accused is for selling the adulterated food as per the provisions of Act and Rules and not as per the tests carried out either by the Public Analyst, Baroda or the Analyst of the Central Food Laboratory. No prejudice is caused to the accused on this count nor accused is required to be discharged on the ground that the opinion of the Analyst of the Central Food Laboratory has substituted altogether the new case against the accused.

13. In this view of the matter, the order of the

learned Chief Judicial Magistrate discharging the accused cannot be maintained and this Revision Application is required to be allowed. Accordingly, Revision Application is allowed. The order impugned passed by learned Chief Judicial Magistrate, Bhavnagar, on 20th January, 2000 discharging the present respondent in Criminal Case No. 1006 of 1999 is set aside aside. Learned Chief Judicial Magistrate, Bhavnagar, is directed to proceed further in the said Criminal Case according to law and as expeditiously as possible. Rule made absolute.

(J.R. Vora, J.)

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